

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2819 OF 2004

V.V.F. Ltd. & Ors.....Petitioners

Versus

Sarva Shramik Sangh & Anr.....Respondents

Mr.P.C. Pawaskar, for the Petitioner.

Mr.N.M. Ganguli, for the Respondents.

CORAM: F.I. REBELLO, J.

DATE : 25th October, 2004

P.C.:

1. Rule. Heard forthwith.

2. Reference was pending being Reference No.34 of 2002.

Subsequent to the reference a settlement was entered into by the management with the majority union the VVF Employees Union on 10th April, 2003. One of the terms of the settlement was as under:-

It is agreed that those of the workmen who are beneficiaries of this settlement shall not be entitled to any benefit under the award that may be made in Reference (IT) No.34 of 2002 and they shall make an application to the Honourable Tribunal to exclude them from Reference (IT) No.34 of 2002 in view of their acceptance of this settlement as per Annexure "A".

Thereafter a complaint was filed by the respondent No.1 Union being Complaint (ULP) No.475 of 2003. The Industrial Court by order of 6th September, 2003 in respect of an application for interim relief Exh.D-2 moved in the complaint was pleased to pass the following order:-

The workers at Annexure -A, be given the monetary benefits as par with the workers of the settlement dated 10-4-2003 on executing the declaration with the specific note, that, this is being executed without prejudice to the rights of these workers in respect of their charter of demands, pending in conciliation."

It would thus be clear that the workers whose cause has been espoused by the respondent NO.1 Union and who had filed complaint were to be given the benefits of settlement dated 10th April, 2003. However, their rights in respect of the matters which were in conciliation were kept alive.

3. The company thereafter filed an application in Reference NO.34 of 2002 for disposal of the reference on the ground that it does not survive for consideration. The learned Tribunal by order dated 17th June, 2004 has been pleased to reject the application. One of the reasons given for rejection was that in terms of the settlement the workers who are beneficiaries shall make an application and that none of the workmen concerned in the Reference had come forward before the Tribunal and submitted any applications to exclude his name from the present reference in view of his acceptance of the settlement dated 10.4.2003. The Tribunal then proceeded to hold that the settlement dated 10th April, 2003 is not in respect of the subject matter referred to the Tribunal in the present reference.

4. Having heard learned Counsel for the parties in my opinion the impugned order is liable to be set aside. The

clause in the settlement is clear that those who took benefits of the settlement would move an application to exclude them from the reference. The mere failure of the workmen who had availed of the benefits by itself cannot prevent the Tribunal in considering the application being made at the instance of the company if the workmen have otherwise received the benefits in terms of the settlement dated 10th April, 2003. The finding, therefore, by the learned Tribunal on that count suffers from an error apparent on the face of the record. In terms of the order dated 6th September, 2003 in the complaint filed by respondent union what is kept alive are the charter of demands pending in conciliation as on 6th September, 2003. Those demands on a referee being made by the Appropriate Government will have to be decided, irrespective of the settlement dated 10th April, 2003.

5. In the light of what is stated above, the following order:-

The impugned order dated 17th June, 2004 is set aside.

The matter is remanded back to the Industrial Court, and the following directions, therefore, need to be issued:-

(a) The Industrial Tribunal to decide the application of the Company and if the Tribunal comes to the conclusion that all the workmen represented by the respondent NO.1 have accepted the benefits of the settlement then to pass an order whether the industrial dispute referred to it subsists or not.

If it does not subsist to pass an Award accordingly.

(b) If it comes to the conclusion that inspite of the

settlement of 10th April, 2003 the workmen are entitled to
still proceed with the reference then to pass appropriate
orders and proceed with the reference.

Rule made absolute accordingly. No order as to costs.

(F.I.REBELLO, J.)